Fife City Hall
www.cityoffife.org
5411 23rd Street East, Fife, WA 98424
Tel (253) 922-2489 Fax (253) 922-5355

October 5, 2012

SEPA Rulemaking Advisory Committee
c/o Ms. Fran Sant, SEPA Rulemaking Coordinator
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

SENT VIA EMAIL fran.sant@ecy.wa.gov AND US MAIL

Dear SEPA Rulemaking Advisory Committee:

Thank you for the opportunity to comment on the document entitled "September 25, 2012 SEPA Rule Making Round 1: Preliminary Draft proposed WAC 197-11 revisions."

Thank you also for the time and effort the SEPA Rulemaking Advisory Committee ("Committee") has and will continue to devote to this effort. The goals for a streamlined environmental review process and fostering integration between the State Environmental Policy Act (SEPA) and the Growth Management Act (GMA) requirements are laudable and implementation of those goals is much needed.

In reviewing the preliminary draft's proposed revisions, the following comments are offered. Not having observed the Committee's discussion, the following comments may address issues already discussed. In general, many of the comments seek to encourage, where possible, greater clarity in the draft language.

1. WAC 197-11-800 (1) Minor New Construction – Flexible Thresholds

WAC 197-11-800(1)(b)(i) is proposed to state,

> "(i) The construction or location of four detached single family residential structures."

Standing alone, without context, this proposed language is unclear for the following reasons.

- In many local codes, there is an intentional definitional distinction between the terms "dwelling units", "buildings" and "structures". Dwelling units often being more specific to a building type and living situation, buildings commonly (although not always) reflecting a structure enclosed with a roof and walls and structures being broader in scope, often reflecting anything that is built up yet not necessarily enclosed (including, as examples, a fence or carport). While there can be overlap depending on the local code (e.g. a building can be a structure), there are distinctions.

With this in mind, the Committee should review the proposed exemption language more closely. Literally taken, "four detached single family residential structures" could be interpreted to mean that the exemption applies only to a single family dwelling unit and three detached accessory structures (for a total of four detached structures) on a single lot. Note also that the term "dwelling units" is used in proposed subsection WAC 197-11-800(1)(b)(ii) related to multi-family residential development, making it unclear whether the lack of that term ("dwelling units") in the single family exemption language was or was not intentional.

- On a broader level, as it relates to "Minor new construction" single family dwellings are typically SEPA exempt regardless of the number being constructed (disregarding situations involving lands covered by water or involving critical areas.) For this reason, the reference to "four" could raise interpretation issues. Why, for instance, state "four" when a single family dwelling unit would be exempt? (NOTE: This comment is specific to "Minor new construction", not minor land use decisions (WAC 197-11-800 (6)).

  Admittedly, the exemption could apply to four single family dwelling units on an individual lot in a cottage housing format. If this is the intent, the Committee might consider adding "...on a single lot or parcel" at the end of the proposed exemption language.

2. WAC 197-11-800 (1) Minor New Construction – Flexible Thresholds

On the issue of optional thresholds, the conceptual approach reflected in Proposal B is preferred. (NOTE: It has just come to my attention a new proposal (Proposal C) was developed just this week. This letter is not addressing Proposal C given its recent issuance and the lack of time to review it.)

- Exempt projects should not have additional public notice procedural requirements or requirements for findings. Quite frankly, using the SEPA Register would not be an effective means of public notice anyway given that the general public does not routinely access the SEPA Register nor, for that matter, know of its existence. Further, requiring public notice on exempt projects only gives the public the perception that it (the public) may have an opportunity to affect the proposal under SEPA when in fact that would not be possible.

- With respect to the optional threshold levels on single family residential units: would an optional threshold of 20 single family units (just using 20 as an example) also mean that a subdivision application for a 20 lot preliminary plat is exempt? If so, then the maximum threshold needs to address minor land use decision exemptions (WAC 197-11-800 (6)) as well.

- As for the optional higher threshold levels themselves, to the extent that: a) establishing the higher threshold level is optional; and, b) the thresholds are maximums and a local jurisdiction need not necessarily adopt the maximum level

(e.g. may adopt a higher optional threshold level but not necessarily at the maximum), then flexibility (e.g. higher maximum optional thresholds) should be provided when setting the maximum threshold. This provides each local jurisdiction the opportunity to adopt, should they choose, an optional threshold level unique to their community character and circumstances.

3. WAC 197-11-800 (23) Utilities

I offer no opinion on the proposed electrical utility exemption language.

However, longer term, the Washington State Department of Ecology should review the exemption thresholds for certain utilities in general, especially WAC 197-11-800(23)(b) regarding the diameter of certain utility lines.

WAC 197-11-800(23)(b) states,

> "(23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.
> ...
>
> (b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.
>
> ..."

Local governments, at least those planning under the GMA, are required to adopt within their comprehensive plans a utilities element and a capital facilities element. The GMA requires the identification of existing and proposed locations of capital facilities and utility facilities. The capital facilities and utilities elements must also be internally consistent with other elements of the comprehensive plan, including the land use element.

The eight inch diameter SEPA exemption level for water, sewer and storm drain lines is limiting in light of the planning required under the GMA. Further, given that utility lines are commonly placed underground, the environmental impact is more related to the trenching activity and related traffic control rather than the diameter of the water, storm drain or sewer line itself. The impacts of trenching and traffic control are commonly regulated by local governments by existing code. For these reasons, the upgrade or replacement of, for example, an eight inch utility line segment with a ten inch diameter line should not trigger SEPA environmental review.

4. WAC197-11-315 Environmental Checklist

- While not a significant concern since it is a "may" statement, proposed WAC197-11-315 (6) seems unnecessary. The identification of existing code and regulation that may otherwise address development impacts should already be SEPA practice, that is, when staff reviews the submitted environmental checklist prepared by the applicant.

While the proposed subsection allows staff to pre-identify such situations, the submitted environmental checklist is where an applicant formally describes the proposal. To pre-identify applicable codes or regulations on the environmental checklist that adequately cover the questions is premature, especially if an applicant then revises the proposal prior to submittal of the environmental checklist.

The proposed approach does not fit all projects uniformly and only gives an applicant the impression that no additional analysis is necessary for a certain elements of the environment when in fact it may be if an applicant revises the proposal prior to submittal (or if there was a misunderstanding of the proposal at the pre-application stage.) Further, the proposed language still requires and obligates the lead agency to evaluate impacts of the proposal. In the end, nothing substantive is really gained.

- Proposed WAC197-11-315(7) with respect to electronic submittals and electronic signatures is helpful and appreciated.

5. Miscellaneous

Finally, some minor edits are needed.

- As just one example, in WAC197-11-508 "SEPA Register" the proposed WAC 197-11-508(1)(f) references "WAC 197-11-800(c)(iv)". If this subsection were adopted, the cross reference should be "WAC 197-11-800**(1)** c)(iv)".

I assume other minor typographical matters will be corrected as the document moves forward in subsequent drafts.

Conclusion

Thank you again for the opportunity to comment on the preliminary draft and for the work of the Committee.

I look forward to subsequent drafts and the opportunity to provide additional input and comment. Please feel free to contact me at (253) 896-8633 should you have questions.

Sincerely,

David Osaki, AICP
Director, Community Development/SEPA Responsible Official